

on the Behalf of the King, or by any other, or on the Behalf of the King, and any other, it shall be lawful for such Defendants to plead the General Issue, that they are not guilty, or that they owe nothing, and to give such special Matter in Evidence to the Jury that shall try the same; which Matter being pleaded, had been a good and sufficient Matter in Law to have discharged the said Defendant or Defendants against the said Information, Suit or Action, and the said Matters shall be then as available to him or them, to all Intents and Purposes, as if he or they had **438** sufficiently pleaded, *set forth or alledged the same Matter in Bar, or Discharge of such Information, Suit or Action. 18 *El. c. 5*.

I. Information upon Penal Statutes shall be prosecuted in the Counties where the Offences were committed. 4 *Inst.* 172. *Style*, 209, 223, 340, 356, 381, 383. 1 *Vent.* 8. 3 *Inst.* 193. *Latch*, 192. *Hetley*, 103. 5 *Mod.* 225. *Cro. Car.* 112, 146, 316. *Jones*, 193. *Carthew*, 465.

II. Upon Default of proving that the Offence was committed in the same County, the Defendant shall be found Not guilty. *Carthew*, 290. 2 *Mod.* 246. *Hutt.* 98.

III. The Informer shall make Oath that the Offence was committed in the same County where the Suit is commenced. 1 *Salk.* 372, 373.

IV. The Defendant in an Information upon a Penal Statute, may plead the general Issue.

See *R. v. Kilderby*, 1 *Wms. Saund.* 311, n. 1.

It has always been held that where a subsequent statute gives an action of debt, or any other remedy, for the recovery of a penalty in any court of record generally, it so far impliedly repeals the restraint of this statute, and allows the informer to sue in the Superior Courts.¹ And the Code, Art. 40, sec. 1,² prescribes the rule here, and expressly requires the action to be brought in the County where the offence was committed. As, in an action on the Statute of Usury, the venue must be laid in the county where the usurious interest was taken, *Pearson v. McGowan*, 3 *B. & C.* 700; see *Barber v. Tilson*, 3 *M. & S.* 429; and though the action be removed from the proper county into another for trial, the offence must still be proved to have been committed in the proper county where the venue was laid, *Robinson v. Garthwaite*, 9 *East*, 296. The oath mentioned in the third section is held not to be necessary where the action is in the Superior Courts, *Leigh v. Kent*, 3 *T. R.* 362, (which see also for the classes of penal statutes to which this one applies,) or in actions on subsequent penal laws, *French v. Coxon*, 2 *Str.* 1081, but it is merely directory, in any event,

¹ But see *Lewis v. Davis*, *L. R.* 10 *Ex.* 86.

² See now Code 1911, Art. 38, sec. 1 and note 3 to 4 *Hen.* 7 c. 20.